Special Review

Office of the State Auditor

Who's Keeping Watch?

A Review of the Department of Corrections' Oversight and Management of Mental Health Services Contracts

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Vermont State Auditor

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Mission Statement

The mission of the State Auditor's Office is to be a catalyst for good government by promoting reliable and accurate financial reporting as well as promoting economy, efficiency and effectiveness in State government.

Office of the State Auditor

A Review of the Department of Corrections' Oversight and Management of Mental Health Services Contracts

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Message from the Auditor

This review was requested by a number of legislators, advocates and State employees. It demonstrates that the Department of Corrections (DOC), since 2000, neglected to: 1) properly manage its private mental health contracts; 2) follow bidding procedures; and, 3) provide adequate quality assurance for key mental health care services.

This means that inmates did not receive services the State paid to provide. We estimate from sampling that Vermont taxpayers paid at least $141,000 in questioned costs for mental health services for inmates that were never delivered. We estimate that DOC could identify many more questioned costs upon further review of vendor records.

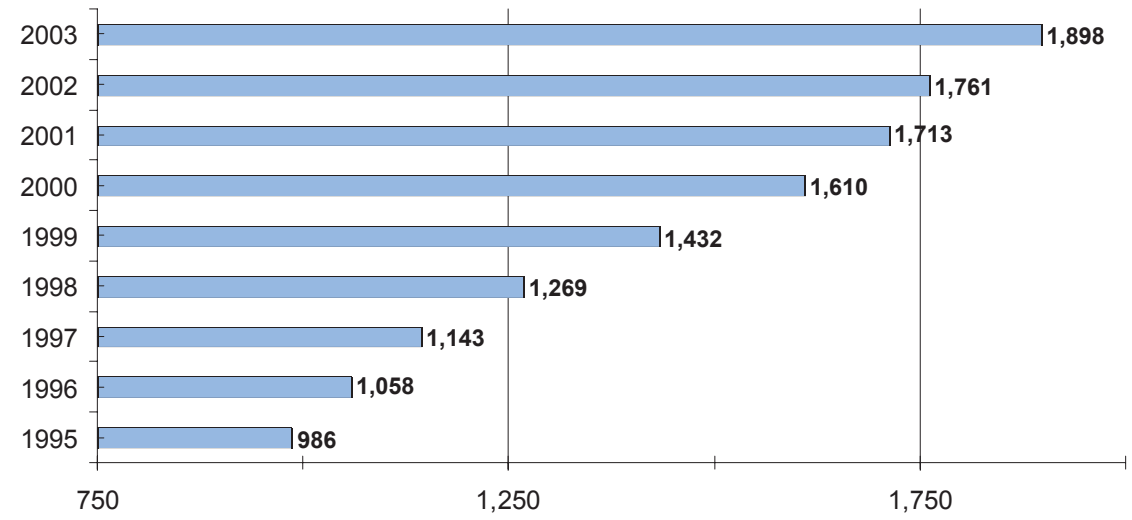
The DOC's hands-off approach to the oversight of its private contractors does not hold these private firms accountable to provide all services outlined in the contract, nor does it require services to be delivered with a high level of quality assurance and in a timely manner. It is a matter of public record that two inmate suicides and five untimely deaths occurred during the time period covered by this review.

We found there are many devoted workers within the correctional system, including State and contract employees. In fact, a number of State employees assisted with this and other reviews. Reports and anecdotes suggest that there are many instances when quality services are provided.

The findings in this report are so serious that the General Assembly should consider a complete overhaul of the Department's mental health delivery system.

The Commissioner and the Deputy Commissioner were extremely cooperative during the review, and appear dedicated to improving management procedures and quality of care within the facilities. In fact, the Commissioner's draft action plan begins to address some of the issues raised in this report.

"The Auditor of Accounts' report details three broad areas of concern and makes many points with which the department agrees. The Auditor's recommendations are all accepted by the department and will be implemented," states Commissioner Gold in his response to a draft of our report. "The benefits of administrative oversight, regular auditing of contract deliverables and quality indicators and detailed accounting must be incorporated such that a flexible, responsive and nimble system is able to provide high quality, professional services."



Vermont's prison population has nearly doubled since 1995, rising from 986 to 1,898 inmates.

It is our conclusion that the DOC's current system of controls does not ensure that inmates receive the necessary and timely mental health care they need. It is also our conclusion that the DOC does not receive all the services it pays for under the contract.

Our Office found the Department of Corrections:

> Engaged in questionable bidding processes in awarding mental health contracts, including awarding contracts in instances where conflicts of interest existed;
>
> Failed to properly manage mental health contracts, allowing the contractor to bill for staff hours and services that were never provided; and,
>
> Did not provide an adequate quality assurance program to evaluate service delivery, and currently relies on the contractor to self report errors and assess financial penalties.

These findings are serious and occur within an institutional culture that lacks accountability and is rife with communication problems from top to bottom. For example, the contractor provides a monthly schedule of hours to be worked by mental health workers in each facility. But there is no tracking and documentation by the prison superintendent, the central office, or even the vendor, to assure that these hours are fulfilled.

We believe the findings in this report are so serious that the General Assembly should consider a complete overhaul of the Department's mental health delivery system. Many things need to change, but the re-examination of how, and by whom, these and other crucial services are provided should be a priority.

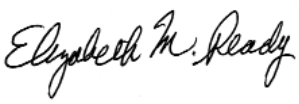
In the short term, our Office recommends that the DOC:

> Establish a contract management oversight team to ensure all contracts comply with the spirit, intent, and requirements of State contracting procedures. DOC should assure that all State contracting procedures comply with conflict of interest policies and are evaluated for performance and cost containment;
>
> Conduct a thorough review of all invoices paid under the mental health contracts to assess possible overpayments due to insufficient staffing. DOC should seek to recover all funds paid for hours not worked, including interest and penalties, from the contractors; and,
>
> Develop strategies to independently verify the quality of mental health services, understand compliance or quality problems, and to quickly implement improvements.

DOC Commissioner Steven Gold and his staff cooperated with the Joint Corrections Oversight Committee and other legislators and committees in responding to investigative requests. They have responded swiftly to the sobering March 13, 2004 *Investigative Report into the Deaths of Seven Vermont Inmates and Related Issues* by attorneys Michael Marks and Philip McLaughlin. Commissioner Gold's draft action plan issued on March 31, 2004 is a good start on these and other issues, and shows that the new Department leadership is willing to correct problems that have lingered for years.

I want to thank the Commissioner and his staff for their cooperation and professional assistance during this phase of our Office's review and hope that the findings and recommendations bolster their efforts to cultivate a system of accountability within the Department.

Sincerely,



Elizabeth M. Ready
State Auditor

April 17, 2004

Observations & Recommendations

A. Bidding Processes

The Department of Corrections engaged in questionable bidding processes in awarding mental health contracts.

Finding A-1: The DOC did not comply with bid procedures in awarding a two-year, $1.4 million mental health contract to Matrix Health Systems in May 2000.

Finding A-2: In May 2003 the DOC incorrectly added the bid evaluation scores and awarded a $2.8 million contract to Matrix Health Systems although the company was not the highest scorer.

Finding A-3: The clinical programs director recused himself from the 2003 bid evaluation process because of a "collegial" relationship with two of the bidders. However, he still played an active role in the bidding and awarding process that resulted in the contract with Matrix Health Systems, one of the bidders with whom he had a conflict. He also subsequently served as the contract manager approving invoices for payment.

Finding A-4: The DOC indicated a conflict of interest existed on the contract approval request to the Secretary of Administration for its 2003 contract with Matrix Health Systems but provided no explanation.

Finding A-5: The DOC may have improperly awarded a $65,000 consulting contract in the Fall of 2003 by not disclosing a conflict of interest.

Finding A-6: The DOC assigned the mental health contract to Paul Cotton, M.D., P.C., through an amendment effective October 1, 2003. This firm was not one of the original bidders. Another amendment increased the maximum contract cost from $2.8 to $5.1 million – a 79 percent increase. These amendments were approved and signed after the effective dates of the amended changes.

Finding A-7: The DOC allowed mental health services to begin without signed contracts.

Recommendations

The DOC should comply with the spirit, intent, and requirements of Agency of Administration Bulletin No. 3.5, Contracting Procedures, and establish a contract administration oversight team that will help preserve the integrity of the competitive bidding process by:

Strictly adhering to all procedures for proposal, review and evaluation outlined in DOC's Request For Proposals (RFP);

Fully complying with Bulletin No. 3.5 and Form AA-14 certification requirements regarding disclosure of conflicts of interest;

Seeking clarification and guidance from the Agency of Administration on the legal and financial ramifications resulting from requests for contract reassignments versus the benefits of a competitive bidding process. This is particularly important in those instances when contracts are being reassigned at the time the original contract is being executed and when the scope and dollar value of contracts increase significantly; and,

Ensuring all contracts and amendments are signed and fully executed before the effective dates and actual delivery of services.

Findings & Discussion

Finding A-1
The DOC did not comply with bid procedures in awarding a two-year, $1.4 million mental health contract to Matrix Health Systems in May 2000.

In April of 2000 the DOC issued an RFP for inmate mental health services. The RFP stated that proposals would be evaluated based on the following weighted scores: Vendor Qualifications (30 points); Quality of Proposal (30 points); and Pricing (40 points).

The clinical programs director stated in a November 20, 2000 letter to this Office, that "four competent reviewers were provided with copies of all the proposals and asked to carefully review them and participate in a phone call to discuss their findings. I discussed the proposals with each reviewer and we went through each of the evaluation criteria (vendor qualifications, quality of proposal, and pricing). Based on the comments of each reviewer, I felt it was unnecessary to convene a meeting to discuss these as a group. Each reviewer strongly recommended acceptance of the Matrix Health Systems contract. I neither asked for, nor received, score sheets indicating the precise score each reviewer assigned each proposal on each criteria." During our review we could find no evidence related to the results of this scoring process.

To be fair to all bidders and to maintain the integrity of the State's bidding process, evaluations should always be carried out according to the RFP.

Finding A-2
In May 2003 the DOC incorrectly added the bid evaluation scores and awarded a $2.8 million contract to Matrix Health Systems although the company was not the highest scorer.

In April of 2003 the DOC again issued a RFP for inmate mental health services. The RFP stated that proposals would be evaluated based on the following weighted scores: Vendor Qualifications (30 points); Quality of Proposal (30 points); and Pricing (40 points).

We evaluated scoring sheets and noted that the scores for the bidders were added incorrectly and that the bid from Behavioral Health Concepts, Inc., (BHC) received the highest score rather than Matrix Health Systems as outlined in the May 19, 2003 memo from the clinical programs director to program reviewers.

In recent discussions, DOC management has acknowledged this was a data entry error. However, we could find no documentation or evidence to support how the average scores were derived as outlined in the May 19, 2003 memo. We note that the scoring of the proposals was not the sole determining factor in awarding the bid.

Finding A-3
The clinical programs director recused himself from the 2003 bid evaluation process because of a "collegial" relationship with two of the bidders. However, he still played an active role in the bidding and awarding process that resulted in the contract with Matrix Health Systems, one of the bidders with whom he had a conflict. He also subsequently served as the contract manager approving invoices for payment.

We reviewed the documents associated with the April 2003 RFP process and noted that the clinical programs director recused himself from the 2003 proposal evaluation process "because of my relationship with two of the proposers." The director explained, in a response to a question about the nature of his relationship with the bidders, explained that he had a "collegial" relationship with individuals at Matrix Health Systems and with John Holt, Ph.D., of Managed Correctional Resources, LLC (MCR). As a result, he had asked a DOC employee, the former commissioner, to chair the proposal evaluation process.

While the clinical programs director did not complete evaluation-scoring sheets, it appears that the director played more of a role than one would expect from someone who had recused himself from the process because of a relationship with two of the bidders, one of whom was eventually awarded the contract. We could find no evidence in the contract file that the chairman of the review committee wrote a memo or report summarizing the committee's review and recommendations. We did however note subsequent memos from the director that summarize the bid and evaluation process and include specific details from each proposal. We noted that the clinical programs director also serves as the DOC's contract manager for the Matrix Health Systems contract and approves all invoices for payment.

Finding A-4
The DOC indicated a conflict of interest existed on the contract approval request to the Secretary of Administration for its 2003 contract with Matrix Health Systems but provided no explanation.

Bulletin No. 3.5 states that "for any contract greater than $10,000, an AA-14 (contract Summary and Certification Form) must be completed." The form summarizes the nature of the contract, the amount of the contract, the effective dates and serves as a certification form for those contracts requiring prior approval by the Secretary of Administration and the Attorney General's Office. The form also requires departments to indicate if there is "an appearance of a conflict of interest so that a reasonable person may conclude that this contractor was selected for improper reasons."

The AA-14 that was completed for the DOC's $2,840,640 contract with Matrix Health Systems in June 2003 for inmate mental health systems had a "Yes" checked for the question, "Is there an 'appearance' of a conflict of interest so that a reasonable person may conclude that this contractor was selected for improper reasons? If yes, explain)."

There was no explanation on the form outlining the nature of the conflict of interest and we could find no other evidence explaining the conflict. The clinical programs director, in response to our questions, stated that the reason the form indicated a conflict was because of his relationship with the contractor that is noted above.

Bulletin No. 3.5 also requires that: "If a reasonable person might conclude that a contractor was selected for improper reasons, the supervisor should disclose that fact in writing to the AG and Secretary and document the reasons why selecting the desired contractor is still in the best interests of the State." We could find no evidence or documentation that the Department complied with this requirement.

Finding A-5
The DOC may have improperly awarded a $65,000 consulting contract in the Fall of 2003 by not disclosing a conflict of interest.

The clinical programs director recused himself from the May 2003 bid evaluation process related to statewide mental health services for inmates because of his relationship with John Holt of Managed Correctional Resources, LLC (MCR) and individuals from Matrix Health Systems. (This was noted in Finding A-4, above.)

Our review of DOC contracts noted a $65,000 contract with MCR signed by John Holt. The clinical programs director conducted a simplified bid process for soliciting RFPs in August 2003 and also placed newspaper advertisements and an announcement on the State's electronic bulletin board. The contract is for "correctional treatment program consulting," with effective dates of September 15, 2003 through May 31, 2004.

The State of Vermont Contract Approval Request Form AA-14 did not indicate a conflict of interest nor could we find any documentation that complied with the conflict of interest disclosure requirements outlined in Bulletin No. 3.5. This policy states: "If a reasonable person might conclude that a contractor was selected for improper reasons, the supervisor should disclose that fact in writing to the AG and Secretary and document the reasons why selecting the desired contractor is still in the best interests of the State."

The clinical programs director informed us that he alone reviewed the proposals and recommended contracting with MCR. The clinical programs director serves as the contract manager and approves all invoices for payment.

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Mental Health Care: Delivery & Oversight in Other States

Connecticut

Connecticut contracts with the University of Connecticut's academic health center which, in turn, established the University of Connecticut Correctional Managed Health Care program. The program provides all mental health (and medical) services for inmates at 18 facilities. Services for approximately 20,000 inmates at 18 facilities, at a cost of $55 million per year.

Maine

Maine contracts with Correctional Medical Services and Liberty Health Care to provide mental health services. State employees also serve as clinical psychologists and psychiatric social workers in the system. Maine audits the contractors using National Commission on Correctional Health Care consultants.

Massachusetts

The state signed a four-year, $222-million contract with the University of Massachusetts Medical School Correctional Health program in 2003 for all health, dental and mental health services for the state's approximately 10,000 inmates.

New Hampshire

A contract with Dartmouth Medical School provides psychiatrists and nurse practitioners for mental health services. Other health services are handled by contracted physicians and dentists, and state employees. Practitioners make referrals to outside providers, clinics and hospitals.

Rhode Island

State correctional employees, in a Health Care Services division, provide mental health (and medical) services to approximately 3,600 inmates. Health Care Services personnel make referrals to outside contracted providers and medical facilities as necessary.

Vermont

Vermont contracts with Paul Cotton, M.D., P.C., a private mental health services provider for services at nine facilities. Pharmacy costs are paid by the state with drugs selected from a formulary managed by the medical services contractor, Correctional Medical Services.

Source: *Vermont State Auditor's Office and the State of New Hampshire Office of Legislative Budget Assistant.*

Finding A-6
The DOC assigned the mental health contract to Paul Cotton, M.D., P.C., through an amendment effective October 1, 2003. This firm was not one of the original bidders. Another amendment increased the maximum contract cost from $2.8 to $5.1 million — a 79 percent increase. These amendments were approved and signed after the effective dates of the amended changes.

We reviewed the amendments which developed shortly after the June 1, 2003 Matrix Health Systems contract became effective.

Amendment No. 1, which increased the contract by $36,126 for services at Northwest State Correctional Facility and Marble Valley Regional Correctional Facility in July through September 2003, was not signed by both parties until the third week in October. In other words, the amendment was not entered into until after the additional services had been provided.

Amendment No. 2 assigned the full performance of the contract to Paul G. Cotton, M.D., P.C., effective October 1, 2003 but was not signed by the contractor until October 17, 2003 and the DOC Commissioner on October 23, 2003. Again, the amendment was signed after the effective date of the assignment to Dr. Cotton.

The main contract for inmate mental health services had effective dates of June 1, 2003 to May 31, 2006. The contract was signed by DOC commissioner Gold on June 27, 2003 and by Dr. David Fassler of Matrix Health Systems on August 22, 2003. In a letter enclosed with the signed contract Dr. Fassler stated, "As promised, enclosed is the signed copy of the new contract. Please hold it until we have consensus on the wording of the amendment which will transfer the contract to Paul Cotton, PC and incorporate the additional work we've been doing in St. Albans."

Dr. Fassler apparently signed the original contract with full knowledge and department approval that the contract was to be reassigned to Dr. Cotton due to concerns about insurance liability and indemnification issues. Standard language in State contracts allows the performance of contracts to be reassigned with prior written approval of the State. However, this assumes that an existing contract is in place. In this case, at the time the original contract was signed on August 22, 2003 both the DOC and Dr. Fassler had agreed that the contract would be reassigned to Paul Cotton, M.D., P.C. This raises the issue of whether the contract should have been rebid, given that Dr. Cotton was not one of the original bidders.

In addition, Amendment No. 3 increased the maximum contract price from the original contract amount of $2,876,777 to $5,155,226 to reflect increased services associated with the Springfield prison, women's facilities and substance abuse services. This amendment had an effective date of October 1, 2003; however, it was not signed by the contractor until December 12, 2003 and by the DOC on December 18, 2003. Again, additional services were being provided for approximately 10 weeks before a fully executed contract amendment was in place authorizing the delivery of services.

Finding A-7
The DOC allowed mental health services to begin without signed contracts.

During our review we found that services were being provided before the fully executed and signed contracts were in place. For example, the $1,407,384 contract with Matrix Health Systems that was in effect from June 1, 2000 to May 31, 2002 was not signed by both parties until June 6, 2000.

Additionally, the $2,840,640 contract with Matrix Health Systems scheduled to be in effect from June 1, 2003 to May 31, 2006 was not signed by DOC until June 27, 2003 and not signed by Matrix Health Systems until August 22, 2003. In this case the contractor was providing mental health services for nearly three full months before a fully-executed contract was in place. This lengthy delay placed the contractor, the inmates, and the State at significant risk and liability had any problems arisen during the time the contract was not signed.

We also found that the $65,000 contract with Managed Correctional Resources, LLC, effective September 15, 2003 was not signed by the contractor until October 2, 2003 and by DOC on October 4, 2003. An October 1, 2003 invoice from the contractor for $3,200 details dates of service for consulting from September 15, 2003 through September 30, 2003. This invoice was approved by the clinical programs director with a handwritten note that it was a "priority" payment. No date was indicated by the approval signature.

B. Financial Controls

The Department of Corrections did not have sufficient controls in place to assure that staff hours and services were provided according to contract. As a result, DOC paid for mental health staff hours not worked and services not provided.

Finding B-1: For nearly a year, Matrix Health Systems billed DOC prior to the delivery of services, and in some cases DOC paid these bills before they were provided, contrary to contract payment provisions.

Finding B-2: DOC accepted and paid monthly Matrix Health Systems invoices with no detail of services provided or staff hours worked at each facility.

Finding B-3: The current contractor is submitting incomplete invoices to DOC and DOC is paying those invoices.

Finding B-4: The DOC has few controls of its own in place to ensure that the full-time equivalent staff hours stipulated in the mental health contract are actually being provided.

Finding B-5: DOC has paid for mental health staff hours that were not worked and for services not delivered.

Finding B-6: DOC did not require Matrix Health Systems to pay penalties for services not delivered and hours not worked, and therefore lost thousands of dollars owed under the contract.

Finding B-7: In those rare instances when the contractor paid penalties, they were self-reported and were not accurately reported or reconciled by DOC. One penalty of $24,687.38 should have been closer to $100,000.

Finding B-8: DOC is changing key contract details informally, rather than through the contract amendment process.

Recommendations

DOC should properly manage the mental health contract to ensure contract performance and cost containment. A contract monitoring and administration oversight team should be created to:

Enforce current invoicing requirements in the contract;

Establish better controls to account for and assess professional hours worked and services provided in each facility by the contractor;

Review all mental health provider non-staffing responsibilities in the contracts, assess penalties where necessary and renegotiate and amend the current contract to reflect realistic work goals and the need for contract monitoring; and,

Develop appropriate amendments that would better protect the interests of the State, DOC and Vermont inmates.

DOC should conduct a thorough review of all invoices paid under the mental health contracts to assess possible overpayments due to insufficient staffing. DOC should seek to recover funds for hours not worked in accordance with the penalty provisions in the contract, plus interest, from the contractors.

Findings & Discussion

Finding B-1
For nearly a year, Matrix Health Systems billed DOC prior to the delivery of services, and in some cases DOC paid these bills before they were provided, contrary to contract payment provisions.

The 2000 contract with Matrix Health Systems allowed a pre-payment for the first two months of the contract – June and July. After that, the contractor was required to bill the first of the month for the **previous** month's services.

For nearly a year, however, the contractor billed DOC **prior** to the delivery of services and for a few months was paid by the State before the services were actually provided. DOC subsequently waited until the end of the service month to process payment, but the contractor continued to invoice ahead of the service month.

For example, Matrix Health Systems billed the State $57,917 on September 29, 2000 for services to be provided in October. This invoice was approved by the clinical programs director and paid by the State during October.

The company invoiced the State on December 1, 2000 for $57,917 for services to be provided in December. This was approved December 5, 2000 by the State and paid later in the month.

With the exception of April, 2001, Matrix Health Systems continued the practice of invoicing the State in advance of services until August 1, 2001 when the company sent a bill for services provided in July.

Although acknowledging in interviews that the practice of invoicing before services were provided was contrary to DOC business rules, DOC could provide no documentation where supervisors or the Commissioner approved this practice for any reason.

Approving and pre-paying service contracts should be avoided as it eliminates the ability of the State to review total hours worked and adjust invoices as needed **after** the month of services.

The State's policy guide on contracting procedures, in fact, states, "As a general rule, payments should be made only **after** work has been completed and delivered."[1] (Emphasis added.)

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[1] "State of Vermont, Agency of Administration, Bulletin No. 3.5, Contracting Procedures," August 10, 1995, p. 18.

Finding B-2
DOC accepted and paid monthly Matrix Health Systems invoices with no detail of services provided or staff hours worked at each facility.

We reviewed 34 invoices from Matrix Health Systems submitted between June 1, 2000 and May 31, 2003. All were void of any detail on the number of professional staff hours worked in DOC facilities or services provided. Staff professionals during this time increased from 7.75 full-time equivalents to 9.8 full-time equivalents, per the contract. According to Matrix Health Systems officials, it was standard practice to divide the contract amount by 12 and then invoice the State for one-twelfth each month.

Though not specifically required in the State's contract with Matrix Health Systems, Bulletin No. 3.5 recommends that invoices generally document the work performed and include information on the number of hours or days worked.[2]

Before the adoption of the VISION financial information system on July 1, 2001, the State's invoice cover sheet required a department head or authorized State agent to sign a statement which said:

> *"I hereby certify that the bills, hereto attached and set out in the foregoing schedule, are just and true in all respects, and that the goods or materials covered by this claim have been inspected and received or the services have been performed in accordance with specification and are in proper form, kind, amount and quality. Payment is hereby recommended."*

Only two out of the 11 pre-VISION invoice cover sheets we reviewed in the contract payment file had been signed by an authorized agent. It was a common practice to only place copies of these cover sheets in the payment file. The signed originals may be in storage at the public records warehouse in Middlesex, according to the DOC.

Finding B-3
The current contractor is submitting incomplete invoices to DOC and DOC is paying those invoices.

When the current mental health care provider, Paul Cotton, M.D., P.C., assumed the contract in October, 2003, the contract was amended and for the first time included specific language on what was to accompany monthly invoices:

> *"Monthly invoices shall detail the hours and rates billed for each position up to the maximum total amount provided in this agreement."*

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2 Ibid.

We reviewed Paul Cotton, M.D., P.C. invoices for October 2003 – February 2004, and found no invoices with the required detail. For example, the Paul Cotton, M.D., P.C. invoice of January 2, 2004 for December services simply lists the total due: $144,337.

However, DOC continues to pay these invoices. This is significant in that the number of professional providers now involved in providing services has risen to 19.7 FTEs per the contract and is delivered by more than 20 different people.

Both DOC and the providers are aware of the invoice requirement but have not yet worked together to agree on a suitable information format to meet the contract's objective.

Finding B-4
The State has few controls of its own in place to ensure that the full-time equivalent staff hours stipulated in the mental health contract are actually being provided.

With no detail on hours worked or services provided by the contractor on its monthly mental health care invoices, we asked how DOC could compare the contractor's performance against contract requirements. At the nine DOC facilities where services are now provided, we found that contractor staff members do not positively report their time to on-site State employee supervisors.

Each contract worker currently receives a monthly work schedule specifying hours to be worked at the various state facilities. The schedule is prepared by Dr. Colleen O'Brien, a licensed psychologist and the mental health program administrator for Paul Cotton, M.D., P.C., after consultation with her staff.

A copy of the schedule is also provided to the correctional facility superintendent. Mental health employees and contracted providers report their time monthly to the offices of Paul Cotton, M.D., P.C., but the State does not independently verify the hours worked or actual service delivery against the contract requirements. Instead, the State relies on the contractor to police itself and penalize itself through self-reporting of professional staff absences.

DOC appears to have a diffuse, "soft approach" to contract monitoring, rather than a formal, well-documented system that clearly verifies contractor invoices and job performance.

For example, one of the feedback mechanisms is superintendent dissatisfaction. When we asked the clinical programs director how he developed reasonable assurance that mental health staff hours and services were being provided according to the contract, he indicated that superintendents were quick to let him know if contractors failed to show up. "When they are not there, I hear about it right away," he said. No log, however, is kept on these superintendent reports to help review invoices from problem months.

DOC administrators in Waterbury can also get reports on mental health contract issues from people working on the health care contract for Correctional Medical Services, either facility nurse managers or their supervisors.

Periodic quality assurance reports from the contractor report on compliance with standards at each facility, but do not report on staffing absences.

Additionally, the monthly Executive Health Committee meetings are an opportunity for DOC staff to get information on health and mental health contractor issues. Inmate grievances, concerns expressed by family members, or issues raised by the Vermont Protection & Advocacy are other avenues used to evaluate contracted services and identify problems.

Finding B-5
DOC has paid for mental health staff hours that were not worked and for services not delivered.

The failure to closely monitor the mental health contract, and to address conflicting interpretations of the contract that have serious financial ramifications, have caused the State to routinely pay for hours not worked and services not rendered.

For example, from the beginning of the statewide contract in June 2000 until September 30, 2003, Matrix Health Systems was required to provide one FTE, or 40 hours a week, of mental health services at the Dale Correctional Facility in Waterbury. These hours have been paid for, month after month, but in reality the facility has received about 30 hours or less of staffing per week.[3] For the 12 months previous to October 1, 2003, we calculate that the penalty for unstaffed hours at Dale could have been at least $23,000.[4]

The overpayment for services at the Dale Correctional Facility continues to this day. As of October 1, 2003 the number of mental health staff hours at Dale was slated to increase to 152 hours per week, or 3.8 full-time equivalents, in the new contract with Paul Cotton, M.D., P.C. **DOC has been approving invoices and paying for these extra staff hours, despite the fact that there is as yet no additional staff**. The reason: the new mental health inpatient unit planned for Dale last summer has not been opened due to lack of funding. DOC officials could give no estimate of when the new area would be ready.

The State apparently compensated the previous contractor on a routine basis for employee staff hours not worked due to holidays, sick leave, and vacation.

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3 State Auditor's Office (SAO) discussions with DOC and mental health staff and review of payroll records.

4 SAO analysis.

We reviewed Matrix Health Systems payroll information, requested by the Auditor's Office, to support past invoices. For the weeks ending May 31, 2003 through October 3, 2003 our review indicates that the State clearly paid for Matrix Health Systems employees who had days off for sick leave, vacation, or holidays.

For the two-week pay period ending September 26, 2003, DOC paid for a total of 70 hours of leave time. These were hours apparently not worked in correctional facilities. It is not clear to us how many, if any, of these 70 paid staff hours, were fulfilled by other employees or contracted providers.

This policy of compensating employees for certain hours not worked in DOC facilities was apparently in effect throughout the entire Matrix Health Systems contract period, June 1, 2000 to September 30, 2003.

The financial manager for Matrix Health Systems indicated to us that it was the interpretation of Matrix Health Systems that the DOC contract called for FTEs, and not specific hours. The FTEs required in the contract are based on a 40-hour work week, he noted, and include time off for such situations as sick days, or holidays. He said Matrix Health Systems provides seven paid holidays to its employees.

The fact that the contractor and the State differed greatly on whether or not the contract requires a specific number of staff hours to be provided to inmates in a facility is very troubling. The financial variation in these viewpoints could certainly be valued at thousands of dollars per month.

Our analysis of the contract language regarding the staffing matrix is that the FTEs listed by facility are for the number of hours of **actual service** that should be provided to inmates by facility. We assert that the staffing matrix does not include time spent on sick, vacation and holiday leave, as the definition of these items, and possible allowances for them, were not a contract item.

The total number of hours of paid leave over the four-month time period we reviewed (June, July, August, September, 2003) was 360 hours. For each of these months, Matrix Health Systems invoiced the State for the contract maximum – June, $75,833; July, $87,342; August, $87,342; September, $88,941.

At the penalty rate of $30 per hour outlined in the contract it appears that, if these 360 hours were not backfilled by other staff time, Matrix Health Systems could owe the State approximately $10,800 for paid hours of service that were not provided to inmates during the four-month period. (The penalty would be higher if the contract's double-penalty sanction was applied to the second, third and fourth months.)

Further analysis is needed in order to determine the full amount owed for hours of service not provided over the life of the contract with Matrix Health Systems.

We also found that the time-reporting process for Matrix Health Systems' "W-2" or regular employees and the "1099" or contracted employees is inadequate from an internal control design and operational perspective. For example, not all invoices submitted to Matrix Health Systems by its contractors indicate the number of hours actually worked.

These deficiencies make it difficult, if not impossible, for DOC managers, or auditors, to review records to provide assurance of hours worked:

There were no supervisory signatures on the employee's time reports to verify hours worked;

Management does not review submitted regular employee time reports or invoices from contractors to ensure that contractually obligated FTEs were provided to DOC;

There is no uniform standard reporting form for contracted employees to report/invoice hours worked and services provided. Ideally, these would show the date, facility, hours worked, and service provided.

We found that DOC is making overpayments to the current contractor as well.

For example, the State probably paid for many hours not worked in October, 2003, when the contract changed hands from Matrix Health Systems to Paul Cotton, M.D., P.C. and the maximum staffing authorization increased to 19.7 FTEs.

The contract called for a maximum of 19.7 FTEs and a maximum payment of $130,721 for the month of October. We reviewed contractor payroll and staffing records provided by Paul Cotton, M.D., P.C. to support the company's invoice for October. The information provided indicates that employees and contractors worked a total of only 11.12 FTEs during the month of October, or 56 percent of the required FTEs, even though the contractor invoiced for the maximum payment.

Thus, it would appear that there were considerable hours not worked that the State paid for. In January, the contractor reported a staffing deficiency for the months of October, November and December and reduced its invoice dated February 1, 2004 for January services by $24,687.38. The penalty, and why it may be insufficient, are discussed in Finding B-7.

Finding B-6
DOC did not require Matrix Health Systems to pay penalties for services not delivered and hours not worked, and therefore lost thousands of dollars owed under the contract.

Hours: DOC management expressed to us its belief that the mental health contract was more about people and clinical hours at facilities, than it was about exact fulfillment of every detail of the outlined comprehensive mental health services that were to be provided.

Even with this emphasis on people and hours worked at facilities, DOC did not enforce penalties defined in the contract when hours fell below contract standards. Though monitoring assignments were not clearly spelled out, the State's contract did have clear guidance for withholding payments for any staffing deficiencies. The contract stated:

> *"It is the contractor's responsibility to insure that the services described in Attachment A are delivered according to the terms described therein. The scope of services and the staffing matrix represent specific deliverables for which the Contractor is responsible.*
>
> *If the Contractor fails to provide staff resources described in the matrix, the State will exercise non-compliance penalties. If FTE staff resources designated by site and discipline are not provided, the State will withhold payment for the staffing deficiency according to the following formula:*
>
> *During the first thirty days that specific staff resources are not provided according to schedule, the following hourly rate shall be the basis of deductions from the invoice:*
>
> | | |
> |---|---|
> | *Psychiatrist* | *$85/hr.* |
> | *Psychologist* | *$50/hr.* |
> | *Mental Health Services Administrator* | *$30/hr.* |
> | *Psychiatric Nurse Practitioner* | *$50/hr.* |
> | *Other Mental Health Professional* | *$25/hr.* |
>
> *During any subsequent month that specific staff resources are not provided according to schedule, the following hourly rate shall be the basis of deductions from the invoice:*
>
> | | |
> |---|---|
> | *Psychiatrist* | *$170/hr.* |
> | *Psychologist* | *$100/hr.* |
> | *Mental Health Services Administrator* | *$60/hr.* |
> | *Psychiatric Nurse Practitioner* | *$100/hr.* |
> | *Other Mental Health Professional* | *$50/hr."* |

Let us consider a hypothetical penalty provision from the June 1, 2002, to May 31, 2003 year, using the deficiencies at the Dale Correctional Facility reported above, where instead of 40 hours per week, 30 hours per week would typically be provided.

Most of the facility hours were to be provided by a "Mental Health Professional" according to the contract. If we use the lowest penalty pay rate above ($25/hr.), the penalty for the first month would be a total of 40 hours at $25 per hour, or $1,000. Each of the next 11 months would be double, $2,000 per month, or $22,000 for 11 months. Thus, the total penalty for the 12-month period would be $23,000.

This, and other instances of substandard staffing, should be reviewed for possible penalties.

Services: We found that sometimes the deliverables in the contract were not provided. This seems to have happened repeatedly in the case of the DOC contract with Matrix Health Systems. Some deliverables, such as group therapy in prisons or the development of a quality improvement plan, that were part of the official contract and agreed-upon work specifications, were not met.

The DOC's contract with Matrix Health Systems, starting in June of 2000, laid out an ambitious agenda of comprehensive services to be provided. Interviews with DOC and providers indicate that a rapid increase in demand for basic services such as intakes, assessments, crisis intervention and prescribing issues, pushed some contract requirements to the back burner. The clinical programs director told us he viewed the State's contract as one which provided qualified professional staff people, rather than specific services.

The rapid increase in inmate population, the relocation of inmates from facility to facility, and the need to do initial screenings and treat immediate mental health problems, seems to have exhausted provider hours at the expense of comprehensive treatment plans and follow-up activities.

For example, the contract states:

> *"The Contractor shall provide specialized services for women at risk of emotional distress related to loss of significant family members, termination of parental rights proceedings, or serious adjustment reactions related to incarceration."*

As the contractor was not providing this needed service, DOC negotiated a separate contract with the Vermont Children's Aid Society at a maximum cost of $5,000 per month for 18 months (December 1, 2003 through May 31, 2005) and did not amend the mental health contract to reflect this change. It is important to note that this occurred during a period when the contractor was apparently billing for hours not worked.

The DOC also failed to adjust the mental health contract by amendment to reflect the realities and limitations of its delivery system. Vigorous contract monitoring could have produced better services, penalties for failure to perform, or a renegotiated contract which might have been less expensive to the State but more realistic as to the expectation of the services that would be performed.

Finding B-7
In those rare instances when the contractor paid penalties, they were self-reported and were not accurately reported or reconciled by DOC. One penalty of $24,687.38 should have been closer to $100,000.

We noted only three penalties associated with the mental health services contract during the period June 1, 2000 to February 29, 2004. Those penalties were:

1. For the June 2000 service month, Matrix Health Systems self-reported a $1,024 penalty with its August invoice for a staffing absence at the Northwest State Correctional Facility outside St. Albans.

2. At the same time, the company reported a $960 penalty for the Woodstock Regional Correctional Facility.

3. In February, 2004, Paul Cotton, M.D., P.C. self-reported an invoice reduction of $24,687.38 for a “Q1 Open Position Adjustment.”

All three of these penalties were miscalculated by the contractor.

In the first instance, Matrix Health Systems arrived at the $1,024 penalty using an incorrect penalty hourly rate. The firm used $16 per hour instead of $25 an hour, the lowest labor penalty rate authorized by the contract. Using the correct labor rate, the penalty should have been $1,600.

In the second instance, there was a multiplication error. The contractor listed a labor rate of $30 an hour, for 30 hours a week, for 4 weeks. This should have yielded a penalty of $3,600, not $960.

In the third instance, the contractor’s invoice did not include the name of position, the rate paid, or the actual dates unfilled, or the calculation of the penalty. We could find no evidence of the required detail and no evidence of any follow-up by DOC requesting back-up detail to support the $24,687.38 adjustment that was self-reported by the contractor. As a result we were initially unable to determine if the amount adjusted was the correct amount or if an additional adjustment is owed to DOC due to the lack of sufficient staffing.

Possible Staffing Penalties Owed by Paul Cotton, M.D., P.C.

Month	Contracted FTEs	FTEs Provided by Cotton	Difference	Contract Penalty Amount	Hours Per Month	Total Penalty
October 2003	19.7	11.12	8.58	$25/hour	172	$ 36,894
November 2003	19.7	11.60	8.10	$25/hour	172	$ 34,830
December 2003	19.7	14.03	5.67	$25/hour	172	$ 24,381
January 2004	19.7	15.91	3.79	$25/hour	172	$ 16,297
February 2004	19.7	15.90	3.80	$25/hour	172	$ 16,340
				Total Owed to State		$ 128,742

***Note**: Hours per week are based on 4.3 weeks per month. Additional amounts may be owed because the contract penalty language imposes a double penalty for positions that remain unfilled beyond the first 30 days. We did not have enough information in order to determine positions that remained unfilled beyond the first 30 days.*

Upon further review of documents provided by the contractor, it appears that the penalty amount of $24,687.38 for the months of October, November, and December 2003 should have been closer to $100,000. At this Office's request the contractor prepared and submitted data outlining the total number of hours and FTEs actually provided by position, by facility and by month. Our analysis of the data, outlined in the chart above, shows that the contractor only provided 11.12 FTEs of service for the month of October 2003 but initially invoiced the State and was paid for providing the contract maximum of 19.7 FTEs for the month. For November 2003 the contractor reports providing only 11.60 FTEs of service, but again initially invoiced and was paid for providing the contract maximum of 19.7 FTEs. In December 2003, 14.03 FTEs of service were provided and the contract maximum was invoiced and paid. The calculations supporting this analysis are currently being clarified and reviewed by the contractor and this Office.

For each of these penalties, there is no evidence to suggest that DOC personnel asked the contractor to provide full detail to support the calculations and appropriateness of the self-reported penalty. In fact, DOC's clinical programs director acknowledged that he didn't review or even request back-up detail to reconcile the self-reported adjustment.

Finding B-8
DOC is changing key contract details informally, rather than through the contract amendment process.

Ideally, significant changes in contract terms should be included in formal amendments to the contract. In fact, this is required by the contract which says:

> *"No changes, modifications, or amendments in terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and the Contractor."*

Amendments receive legal, financial and programmatic scrutiny by the Administration. This process takes more time than decision-making by vendors and contract managers, but it offers the State time to review and reflect on the potential ramifications of contract changes.

A prime example relates to the recent agreement of the DOC to allow Paul Cotton, M.D., P.C. to deviate from the contractually-established staffing requirements to respond to changing conditions and clinical needs.[5]

The specific staffing requirements in the contract are the basic standard which the State can use to audit, evaluate performance, and authorize payments.

A strict framework may not allow for the most responsive mental health care delivery service. However, the DOC should not replace the specific staffing level outside of the amendment process, or without developing stronger language regarding how DOC will verify the total hours worked.

Additionally, we found that key decisions on adding new staff and fiscal liability to the State have been made verbally, with no written follow-up.

When the contract was amended and assigned to Paul Cotton, M.D., P.C. as of Oct. 1, 2003 there were 11.325 FTEs authorized, with an increase to 19.7 FTEs. The contract said these new positions "will be added and invoiced only as specifically authorized by the State."

We found that these positions were being verbally approved by the DOC with no written follow-up correspondence to document the official change in the numbers of staff paid for by the DOC.

As it is critical for billing purposes, the DOC should have clear documentation as to when additional staff workers were authorized under the contract.

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[5] Letter from Colleen J. O'Brien, PhD., Mental Health Services Administrator, Paul G. Cotton, M.D., P.C., to Tom Powell, Ph.D., clinical programs director, DOC, March 4, 2004.

C. Quality Assurance

The Department of Corrections does not have an independent system to evaluate the quality of mental health services.

Finding C-1: The quality improvement plan required by the 2000 and 2003 contracts was never developed and implemented.

Finding C-2: The DOC relies heavily on quality assurance checks done by the contractor, not the State or an independent agency.

Finding C-3: By June 30, 2002, all four positions in the DOC's Quality Assurance Division had been eliminated due to continued pressure on the DOC budget.

Recommendation

In addition to its generally informal feedback systems, and the National Commission on Correctional Health Care surveys conducted every three years, the DOC should develop strategies to independently verify the quality of mental health services, to understand compliance or quality problems, and to quickly implement changes.

For example, the DOC should periodically audit the compliance reports issued by the contractor.

Findings & Discussion

Finding C-1
The quality improvement plan required by the 2000 and 2003 contracts was never developed and implemented.

The DOC's mental health contract for the time period of June 1, 2000 through May 31, 2002 required the Matrix Health Systems Mental Health Administrator to perform the following:

> *"In consultation with the Director of Psychiatry, develop, implement and revise, as necessary, a quality improvement system that identifies quality indicators, tracks these indicators and makes changes in services as indicated."*

During our review we could find no evidence or documentation that the quality improvement system as required by the contract was developed or implemented.

The mental health contract that began on June 1, 2003 contains more extensive and specific quality assessment and improvement language that required Matrix Health Systems, and since October 1, 2003, Paul G. Cotton, M.D., P.C., to perform the following:

> *"Under the direction of the supervising Psychiatrist and Mental Health Services Administrator (and with the cooperation of the state chief psychologist and other state mental health staff) the Quality Assessment and Improvement program shall have three core components:*
>
> *A. The Annual Program Evaluation*
> *B. The Quality Improvement (QI) Work Plan*
> *C. Quarterly Core Indicator/Quality Improvement Activity (QIA) Reports*
>
> *A. Annual Program Evaluation*
>
> ***The Program Evaluation will assess how the Contractor fulfills the service and quality goals specified in this contract. Data sources include the following**:*
>
> *i. Clinical Outcomes*
> *ii. Diagnoses*
> *iii. Appointment Access*
> *iv. Satisfaction Surveys*
> *v. Utilization Reports*
> *vi. Adverse Incident Reports*
> *vii. Interviews With Key Staff Members*

The evaluation will discuss the program's strengths and opportunities for improvement, using quantitative measures as much as possible. In cases where quantitative measures do not exist, a quality improvement initiative will define new measures and begin to gather data. The State shall provide feedback and approval of all methods utilized.

B. ***Quality Improvement (QI) Work Plan***

The QI Work Plan will describe quality improvement activities (QIAs) and define the core indicators and standards that will ensure program effectiveness. The following QIAs will be reported:

Discharge Coordination ...
Evaluation of New Technology ...
Gender-Sensitive Programming ...
Medical Integration and Disease Management ...
Symptom Reduction Management ..."

During our review we could find no evidence or documentation that a quality improvement system as required by the contract was developed or implemented through January 2004.

It should be noted that on April 1, 2004 we were provided with a draft copy of a Quality Improvement Program Description and Work Plan that was reviewed and approved by Paul G. Cotton, M.D. and Colleen J. O'Brien, Ph.D., Program Administrator for Dr. Cotton, and Tom Powell, DOC's clinical programs director.

Also, a description of the third core component of the plan, "*Quarterly Core Indicator/Quality Improvement Activity (QIA) Reports*," was not included with contract documents on file. This may be a clerical error.

Finding C-2
DOC relies heavily on quality assurance checks done by the contractor, not the State or an independent agency.

With nine facilities spread out over the state, and with a growing demand for mental health services, it is imperative that systems be in place to review the quality of the mental health services provided, and to review how well the contractor is complying with DOC policies and procedures.

In interviews with DOC management, we learned that the system of quality assurance is multi-faceted, but that it does rely heavily on self-reporting by the contractor to keep track of day-to-day quality issues.

Every three years, the National Commission on Correctional Health Care (NCCHC) conducts an independent survey of the health and mental health care functions at all DOC facilities to evaluate their compliance with NCCHC's *Standards for Health Services*. The last survey was conducted in 2001 and the next is planned for the summer of 2004.

The contractor's mental health administrators, both past and present contractors, have produced periodic reports which document how the contractor is meeting DOC and mental health standards. These are typically presented for review and discussion at the Executive Health Committee meetings which are attended by a range of DOC administrators and outside providers. The meetings are held monthly, but the quality assurance reports have not been done on a monthly basis, according to DOC managers.

These quality assurance reports, done by facility, report on compliance with various DOC standards, such as:

- Timely response to mental health referrals (within 72 hours or less);
- Suicide risk assessments (completed within 24 hours); and,
- Medication administration (within 24 hours of doctor's orders).

We learned that due to staffing and resource limitations, DOC does not conduct its own testing or auditing of these self-reports from the contractor.

DOC has other means to determine the quality of mental health services, such as reports or complaints from superintendents, discussions with facility nurse managers employed by Correctional Medical Services, the firm which provides the health care portion of inmate services, inmate grievances, or input from families or prisoner advocates.

On-site, State monitoring of health care quality is a goal of some. The minutes of the November 12, 2002 Executive Health Committee meeting indicate there was a discussion about the difficulty of monitoring health care from a distance. The minutes noted, "Joe said that they need to hire case managers who work for the State to do the monitoring and QA."[6]

6 Attributed to Joe Jacobs, then Medical Director for the Department of Corrections.

Finding C-3
By June 30, 2002, all four positions in DOC's Quality Assurance Division had been eliminated due to continued pressure on the DOC budget.

From the mid-1990s through June 30, 2002, a distinct quality assurance division operated within DOC that had as many as four employees. Due to budget pressures and a desire to reduce central office administrative overhead, when a person left, or moved to another DOC area, the position was left vacant and eventually eliminated. When the director retired as of June 30, 2002, the remaining positions were left unfilled or individuals were transferred, and the function ended.

The goal of the quality assurance division was generally to establish a process for evaluating DOC and contractor performance. The group facilitated audits of DOC facilities and programs, and evaluated newer DOC programs such as the intermediate sanctions effort, and the reparative justice program, to understand how well they were working. The division did not have the responsibility to review medical and mental health services.

One former member of the division told us, "Overall we were getting people to accept that monitoring and evaluating your process and measuring your outcomes was a normal part of business. We kept pushing that concept forward," he said.

The loss of a quality assurance team at a time when the prison population was increasing and the use of outside contractors was expanding certainly contributed to an erosion in management's ability to oversee and evaluate programs and contracts.

Background

The Department of Corrections (DOC) contracted for its first system-wide, comprehensive mental health service delivery system in the year 2000. Since that time, DOC has expanded the scope of services, added new facilities and more inmates, while the cost has nearly tripled.

Prior to 2000, the Department's mental health services for in-state incarcerated inmates were provided by a combination of statewide directors based in Waterbury, nurses in facilities who were State employees, contracted doctors and other private professionals located near DOC facilities. (Mental health services for out-of-state inmates, currently about 400 individuals, are a responsibility of the out-of-state contractor and are included in the per diem housing cost. The out-of-state contract, and its mental health component, are not subjects of this report.)

In seeking a sole provider for in-state mental health services in 2000, DOC clinical programs director Thomas Powell, Ph.D., wrote, "We believe that this (previous) system has been successful in terms of developing an adequate service base at each site; however, it has been somewhat fragmented because of the numbers of different agencies involved. Additionally, there have been redundant administrative overhead costs built into the contracts for each of the separate entities. Finally, it has been difficult to operate as a managed care system with the relatively high number of separate organizational entities."[7]

The DOC selected Matrix Health Systems of Burlington, VT in May of 2000 for a contract that began on June 1, 2000. Dr. Powell cited the key benefits of a single provider over the existing arrangement of multiple site-specific contracts:

> **Consistent services:** The contract would provide integration of care across all sites, providing a "standards-compliant set of services in a consistent fashion across multiple Vermont sites."[8]
>
> **Costs:** Dr. Powell estimated that the costs for the first contract year of $695,000 would be 9.4 percent lower than the previous fiscal year's expenses.[9]
>
> **Quality of care:** Dr. Powell cited the experience and accomplishments of the providers in working over the years with the DOC.

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[7] Memo to Program Reviewers, from Thomas Powell, Ph.D., clinical programs director, May 19, 2000, p. 2.

[8] Ibid., p. 4.

[9] Ibid., p. 5.

Job retention: He noted that the contract would be a public-private sector collaboration in which "no reduction in existing state employee positions will result from the execution of this contract."[10]

In summary, noted Dr. Powell, the contract represented "the movement of corrections mental health services into a managed care structure with a capitated rate structure, efficiencies of scale and a high degree of system coordination. I am pleased that we are able to develop this at a significant cost savings trend for the two-year contract period in a collaborative relationship with proven providers in the complex correctional environment."[11]

This first contract required Matrix Health Systems to perform core mental health services for the DOC in compliance with state law, national standards set by NCCHC, and the Department's Mental Health Directives.

The core mental health services included:

Psychiatric services;
Counseling and psychotherapeutic services;
Crisis intervention and emergency services on 24-hour basis;
Assessment and evaluation;
Treatment team meetings and consultations; and,
Psychiatric supervision.[12]

The initial contract, effective June 1, 2000, required a total of 7.775 full-time equivalent (FTE) professionals of various licensure level serving full or part-time FTE positions at the various facilities.

For the period June 1, 2000 through May 31, 2001, compensation for Matrix Health Systems was set at $57,917 per month.

For the period June 1, 2001 through May 31, 2002, compensation increased to $59,365 per month.

The contractor's administrative overhead/profit for the initial two-year Matrix Health Systems contract was estimated at the time to be 13 percent.[13]

Two amendments continued the contract for another year.

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[10] Ibid.

[11] Ibid.

[12] Department of Corrections "Request for Proposals," April, 2000, p. 1-3.

[13] Department of Finance and Management memo to Kathy Hoyt, Secretary of Administration, June 5, 2000.

For the first, effective June 1, 2002 through Nov. 30, 2002, compensation was set at $65,502 per month.

For the second amendment, effective Dec. 1, 2002 through May 31, 2003, the compensation was set at $74,835.33 per month, due in part to an increase in staffing to 9.8 FTEs.

After re-bidding the contract in the spring of 2003 through a public RFP process, Matrix Health Systems was chosen for a new contract. Compensation for the new three-year contract was initially set at $2.9 million for the period of June 1, 2003 through May 31, 2006, but increased as three amendments were adopted.

The contract was first amended, effective July 1, 2003, to increase the contract amount by $36,126 to provide coverage for vacant DOC positions.

This contract was amended a second time, effective October 1, 2003, to assign it to Paul Cotton, M.D., P.C. effective Oct. 1, 2003. (This re-assignment is discussed in Finding A-6.)

The contract was amended a third time, also effective October 1, 2003, to increase the contract maximum over three years to $5,155,226, an increase of $2,278,460, or approximately 79 percent. The contract could average up to $1.7 million per year. The contract required additional professional personnel to be deployed due to the opening of the Southern State Correctional Facility in Springfield, the proposed consolidation of the inpatient mental health unit and services from the Northwest State Correctional Facility in St. Albans to the Springfield prison, and the planned creation of an inpatient mental health unit for women at the Dale Correctional Facility, and other program changes. Full implementation of this contract, Dr. Powell noted, would depend on various factors and the securing of adequate funding.[14]

Under the contract with Paul Cotton, M.D., P.C., as of October 1, 2003, the number of psychiatrists, nurse practitioners, mental health professionals and other clinical workers could reach 19.7 FTEs as long as new positions and hours to be worked are specifically authorized by the State.

The reasons for the growth in the mental health services basic contract from $695,000 in FY01, to up to $1.7 million in FY04 include an increase of incarcerated inmates in Vermont, especially women, the opening of the Springfield prison, an expanded scope of services, complexity of some mental health cases, higher rates of mental illness in the inmate population, and inflationary adjustments.

[14] Memo to Contract Reviewers from Thomas Powell, Ph.D., clinical programs director, October 15, 2003.

Purpose, Authority, Scope & Methodology

Purpose

The Office of the State Auditor is reviewing how the Department of Corrections contracts for the following inmate services: Out of State Inmate Housing, Medical Services, Mental Health Services, Substance Abuse Services, Sex Offender Treatment Services, Cognitive Self-Change Services, and Domestic Abuse Treatment Services. This report was prepared with the goal of providing compliance and performance information related to the Department's systems of contract management.

Authority

This review was conducted pursuant to the State Auditor's authority outlined in 32 V.S.A. §§ 163 and 167.

Scope & Methodology

The scope of this review is to provide findings and recommendations focusing on three primary areas of contract management:

1. Contract Bidding;

2. Contract Payments; and,

3. Contract Monitoring.

The process includes reviewing the design and implementation of internal control systems related to contract management to ensure that established procedures and controls are being followed and continue to be appropriate, and to assess compliance with any relevant laws, rules, and regulations.

The review of the mental health contracts assessed compliance and internal controls in a number of ways, including:

1. An analysis of Department policies and procedures and internal controls related to contract administration;

2. Interviews with key Department staff, contracted staff, and attending Legislative hearings;

3. A review of contract files for documentation relating to the bidding, evaluation and awarding of contracts to determine compliance with Agency of Administration Bulletin 3.5, Contract Procedures and any other applicable rules and regulations; and,

4. A review of contract work specifications and deliverables, payment provisions, contractor invoices and Department payments to determine if they are appropriately issued, recorded and processed.

This review is not an audit conducted in accordance with applicable professional standards. The purpose of an audit is to express an opinion. The purpose of a special review is to identify observations related to a particular issue or program, and to make recommendations so that the relevant department can better accomplish their mission and more fully comply with laws, regulations, or grant requirements.

Appendix A

April 16, 2004

State Auditor Elizabeth Ready
132 State Street, Drawer 33
Montpelier, VT 05633-5101

Re: Commissioner's Response to Auditor's Report on Oversight and Management of the Department of Corrections' Mental Health Services Contracts

Dear Auditor Ready:

The comments that follow below are provided in response to the State Auditor's report entitled *State Auditor's Special Review: Oversight and Management of the Department of Corrections' Mental Health Services Contracts*. I have responded using the format presented in the Auditor's report with item-by-item responses.

This audit has been extensive and demanded much time from department management and providers. Every effort has been made to provide the Auditor's team with the information and documentation sought. As supported by Actions to be taken in the Department's Initial Draft Plan in Response to the Investigative Report into the Deaths of Seven Inmates, it is the intention of the department to significantly improve its procedures with regard to the monitoring of service delivery and billing practices by its mental health services provider. In addition, the department will ensure that it fully complies with Bulletin 3.5 regarding the bid procedures. Finally, specific action will be taken to audit the departments past payments made to the contractors and collect any overpayments or penalties owed the State.

Finding A – Bidding Process: The Department of Corrections engaged in questionable bidding processes in awarding mental health contracts.

A.1. The Department did not comply with bid procedures in awarding a two-year, 1.4 million dollar contract to Matrix Health Systems in May 2000.

The department will continue to internally investigate this finding which will require the examination of documents in the possession of Public Records. We will ensure that our practice follows required bid procedures in the future.

A.2. In May 2003 the Department incorrectly added the bid evaluation scores and awarded a $2.8 million contract to Matrix Health Systems although the company was not the highest scorer.

The department acknowledges an error which changed slightly the scores received by the proposers in 2003. This pertained only to the interview with the proposers and the ten scores provided by the panel which heard and evaluated these proposals. The actual difference in point awards was small and did not alter the final outcome. The Auditor's statement that "… the scoring of the proposals was not the sole determining factor in awarding the bid." is the key operative issue and indeed reflects the reality of that process.

A.3. The Clinical Programs Director recused himself from the 2003 bid evaluation because of a "collegial" relationship with two of the bidders. However, he still played an active role in the bidding and awarding process that resulted in the contract with Matrix, one of the bidders with whom he had a conflict. He also subsequently served as the contract manager approving invoices for payment.

The department does not agree with the finding in that it appears to imply that there was an actual financially based conflict of interest on the part of the Clinical Director and the bidders. The department recognized that there was the possibility of a perception of conflict due to the professional, but non-financial relationship the Clinical Programs Director had with two of the bidders. In order to deal directly with that issue, the Director recused himself from the evaluation of proposals; he convened a panel of ten superintendents and non-DOC professionals to evaluate the proposals and assist in the selection process, which was presided over by former Commissioner Gorczyk. The Clinical Director also recused himself from the reference check process.

The DOC does not have a large administrative staff which can take over a complicated bid process such as this. Because the Clinical Director is the principal person in the Department with the requisite knowledge and experience whose job is to put all the pieces together in a final selection, it was not possible for him to be completely removed from all aspects of this matter. Throughout the process he ensured that other persons were involved in the decision-making and the final contract preparation.

In fact, the Auditor notes "subsequent memos from the Director that summarized the bid and evaluation process and include specific details from each proposal." Those documents were directed towards the evaluation panel and towards the contract reviewers. The Clinical Director was the appropriate individual to prepare such documents. Finally, the auditors note that "the Clinical Programs Director also serves as the Department's contract manager for the Matrix contract and approves all invoices for payment." Again, this is an appropriate role for the Clinical Director.

A.4. The Department indicated on the contract approval request to the Secretary of Administration for its 2003 contact with Matrix Systems that a conflict of interest existed, but provided no explanation.

As noted in A.3. above, the department does not agree with this finding's statement, in part, "that a conflict of interest existed". The Clinical Director, on the AA14 contract approval request form to the Secretary of Administration, did check yes to the question regarding whether there might be the appearance of a conflict of interest. Further explanation regarding the possibility of such an appearance was not provided and is correctly noted as a problem with the filing of that form. However, in the Director's May 19, 2003 contract approval request cover memo he stated, "Dr. Powell has recused himself from scoring and evaluation of the proposals." This comment appears as part of the list of members of the review panel and did not include a further descrip- tion of the reasons for his recusal. Amplifying on the A.3. above, the reasons for this recusal are as follows:

a. Vermont is a small state with a limited number of licensed professionals who are knowledgeable about forensic mental health matters;
b. Dr. Powell has been the clinical director for the Department for almost two decades and, as such, has professional contact with most of the people in this field;
c. The collegial nature of these relationships is normal;

There was no financial, or potential financial, impropriety involved in his reason for recusal.

A. 5. The Department may have improperly awarded a $65,000 consulting contract in the Fall in 2003 by not disclosing a conflict of interest.

The department does not agree with the suggestion that this contract was improperly awarded by virtue of not disclosing a conflict of interest. First, as stated above in A.3. and A.4., there was no genuine conflict of interest, but rather the possibility of an appearance of a conflict. In retro-spect, it may have been more correct to acknowledge and explain the possible appearance of a conflict on the AA14. The Department received two proposals, one from MCR, LLC, and the other from Criminal Justice Solutions, LLC. Pricing for the latter was $8,000 more than the MCR proposal. Bulletin 3.5 encourages agency administrators to accept the lower bids when service offerings are similar. The lower bid was the one that the department accepted. We felt this was a straightforward decision in the best interest of the State that did not require either disclosure of appearance of conflict nor recusal of the Clinical Director.

AUDITOR'S NOTE (A.3 - A.5): *We found that the Department indicated on the Form AA-14 associated with the 2003 Matrix contract that "an appearance of a conflict of interest" existed without explanation. In a follow-up e-mail, the clinical programs director confirmed that, in fact, two of the proposers - John Holt from MCR and the Matrix bidders - were colleagues and felt it best to recuse himself and not evaluate the bids.*

We found that the Department stated an appearance of a conflict of interest in May 2003 with Matrix and John Holt. Therefore, we found that the same appearance of a conflict of interest existed in September 2003 when the Department entered into a contract with John Holt.

A.6. The Department assigned the mental health contract to Paul Cotton, MD, P.D., through an amendment effective October 1, 2003. This firm was not one of the original bidders. Another amendment increased the maximum cost from $2.8 to $5.1 million – a 79 percent increase. These amendments were approved and signed off after the effective dates of the amended changes.

Paul Cotton, MD, was in fact the principal psychiatrist serving in the Matrix Health Systems contract prior to the assignment of that contract effective October 1, 2003. The firm of Paul Cotton, MD, P.D., was generated as a response to State indemnification insurance issues with Matrix; its staff was the same that had served under the Matrix contract. Thus, while it is the case that it is a different company that did not bid on the contract, it is made up of the same individuals that has provided those services and was formed in order to meet the State contract indemnification requirements of the contractor to hold the State harmless.

Additionally, with regard to the series of amendments that occurred to the Matrix Health Systems contract during the latter half of 2003, the reasons are complex. The amendments represented the culmination of several significant changes in the department over a number of months which impacted the delivery of mental health services, as detailed below:

Amendment #1 – Matrix Health Systems

In June, 2003 it was necessary for us to ask for emergency coverage from the Contractor to provide mental health services to inmates in our residential mental health units at the Northwest State Correctional Facility in St. Albans, following the unexpected relief from duty of two state employee psychologists for investigation into misconduct claims. This emergency coverage began on 7/1/03. The loss of services provided by these former DOC employees required an immediate response and replacement of service hours by the Contractor.

This amendment was further complicated by lengthy legal negotiations between attorneys for the Attorney General's office and the Contractor stemming from liability and malpractice insurance coverages, which resulted in the second amendment, the assignment of the contract to Paul G. Cotton, M.D., P.C.

Amendment #2 – Matrix Health Systems contract assignment

Increasing concern with the potential costs of possible litigation in 2003 caused the owner of Matrix Health Systems to reconsider his willingness to continue providing mental health services to the DOC. After several months of negotiation, the contract was transferred and assigned to Dr. Paul Cotton. As described above, Dr. Cotton was the chief psychiatrist under the Matrix contract. He assumed assignment of the contract under his own legal entity ("Paul G. Cotton, M.D., P.C"). This assignment was reviewed in detail and approved by the Attorney General's office. It was subjected to delays as described above.

Amendment #3 – Paul G. Cotton, MD, PC

The opening of the Springfield prison (SSCF) allowed expansion of the inpatient mental health unit and services for men by relocation from the NWSCF in St. Albans facility to SSCF. This led to the substantial re-deploying of existing staff and addition of new personnel at the facili-

ties, particularly SSCF. This amendment also allowed for additional staff at the Dale facility at such time as renovations were completed to allow the opening of an inpatient mental health unit for women. Finally, the amendment included the provision of specific services for inmates with co-occurring disorders (mental illness and substance abuse). It anticipated hoped for funding which might be forthcoming for these new services as well as for substance abuse treatment for inmates in Vermont.

It is correct that these amendments were signed retroactively; this was due to the above circumstances. The complexity of the issues described and the absolute requirement that mental health services continue uninterrupted for inmates in spite of the complex changes necessitated the retroactive signing of these amendments. As previously stated, these amendments were reviewed and approved by the Attorney General's office.

A.8. The Department allowed mental health services to begin without signed contracts.

This finding is accurate and is addressed in A.7. The department will make every effort to see that its contracts are signed prior to the initiation of services in the future.

Auditor's Recommendations for Finding A

The department agrees with the various recommendations made by the Auditor on Finding A. and will establish the recommended "contract administration oversight team".

A. The department will make every effort to "strictly adhere to all the procedures for proposal review and evaluation outlined in Requests For Proposals." The Auditor has uncovered a number of policy deviations. We will correct these deviations.

B. The department will fully comply with Bulletin No. 3.5 and Form AA-14 certification requirements.

C. The department will continue to seek clarification and guidance from the Attorney General's Office and the Agency of Administration in any future situations where contract reassignment is being considered.

The department will make every effort to ensure that all contracts and contract amend-ments are signed and fully executed before the effective dates and actual delivery of services.

Finding B. - Financial Controls: The Department of Corrections did not have sufficient controls in place to assure that staff hours and services were provided according to the contract. As a result, the DOC paid for mental health staff hours not worked, and services not provided.

B.1. For nearly a year Matrix Health Services billed DOC prior to the delivery of services and in some cases DOC paid these bills before they were provided, contrary to contract payment provisions.

Aside from the months of June and July of 2000, where the issue of prepayment is addressed and authorized specifically in the contract, which is noted by the Auditor, prepayment is not further authorized in the contract and stands correctly identified as a significant finding.

B.2. DOC accepted and paid monthly Matrix invoices with no detail of services provided or staff hours worked at each facility.

The Auditor correctly notes that the contract did not require specific detail of services provided or staff hours worked at each facility. Nonetheless, we agree with the finding and recognize it as a significant issue when coupled with the rest of this section's findings.

Regarding the fact that most DOC records of pre-vision invoice cover sheets had not been signed by an authorized agent, the records in the department's files prior to July 2001 are not the official records for the payments made by the State of Vermont. All original documentation of approved payments were sent to the Department of Finance and Management for their approval and processing for payment. The records in question now reside in Public Records. These are the records that required and in fact have the signature of an authorized agent. DOC records and files are incomplete copies and are informational only.

B.3. The current contractor is submitting incomplete invoices to DOC and DOC is paying these invoices.

In October, 2003 the State included language in Amendment #3 specifying monthly invoices with hours and rates billed for each position. The Contractor has recently begun to provide those regular billing statements. The Auditor is correct that the forms required were not submitted between October, 2003 and March, 2004. The accounting of hours has commenced and will continue throughout the duration of the contract. The Auditor incorrectly states that the DOC and Contractor "have not yet worked together to agree on a suitable information format to meet the contract's objective."

B.4. The State has few controls of its own in place to ensure that the full-time equivalent staff hours stipulated in the mental health contract are actually being provided.

The department agrees with this finding and recognizes the need to address it as soon as possible.

B.5. DOC has paid for mental health staff hours that were not worked and for services not delivered.

B.6. DOC did not require Matrix Health Systems to pay penalties for services not delivered and hours not worked, and therefore lost thousands of dollars owed under the contract.

B.7. In those rare instances when the Contractor paid penalties, they were self-reported and were not accurately reported or reconciled by the DOC.

These three findings are very serious and require that the department immediately initiate an investigation of the specific invoices and other relevant documentation to ensure that the State has not paid for services not delivered and hours not worked. If it finds, through close examina-tion of the relevant materials, that the findings are corroborated, it will take whatever steps are necessary to recoup the overpayments and collect any penalties justified by the facts.

B.8. DOC is changing key contract details informally rather than through the contract amendment process.

The Auditor states "A strict framework may not allow for the most responsive mental health care delivery service." While this is true, it is nonetheless incumbent on the department to follow the requirements of the contract process for all the reasons that the Auditor states. While it has been our practice to use formal letters of agreement to deal with non-fiscal-related issues that develop during the course of a contract, the Auditor correctly points out that this is not satisfactory on substantive issues related to the contract. The department agrees with this finding and will in the future conform to the requirements of the contracting process unless specifically and formally excused from so doing.

Auditor's Recommendations for Finding B.

A. The department agrees with the recommendation and, as noted with regard to Section A. Recommendations, will establish the contract administration oversight team. As referred to in the Introduction of this letter, the department is also, as part of its response to the Investigation Report to the Seven Deaths, working with the Agency of Human Services and the Department of Health to establish a Quality Assurance and program audit capacity in the DOH that will perform quality assurance audits of the department's medical, mental health and substance abuse services provision. This capacity, based outside the department, will provide critical performance information to the department as it manages its services contracts, as well as its own staff, in these areas.

The Department strongly agrees with this recommendation and will proceed immediately to implement such a thorough review. This is necessary, in light of the Auditor's findings, not only to ensure that the State has not overpaid and if so, to collect any overpayments and required penalties, but also, importantly, to accurately present and protect the Contractor's reputation and integrity.

Finding C – Quality Assurance: DOC does not have an independent system to assure quality mental health services are provided to inmates.

C.1. The quality improvement plan required by the 2000 and 2003 contracts was never developed and implemented.

The department does not agree with this finding. The Auditor was provided with substantial documentation of the extensive quality assurance activities which were undertaken, documented and provided to the department by the contractor during the 2000-2003 contract held by Matrix Health Systems. This includes mental health file review and standards compliance data, mental health quality assurance procedures, psycho pharmacy costs and a host of additional materials. Much of this was quantitative as well as qualitative information.

As described by the Auditor, the 2003 contract does call for quality assurance reporting on established measures by the Contractor. This activity is taking place; attached is a copy of the 2004 first quarter report.

AUDITOR'S NOTE (C.1): *Our review found that the Quality Improvement Plan required by the 2003 contract had not been implemented. Also, the attachment referenced in the Commissioner's reply is available upon request from the Auditor's Office.*

C.2. DOC relies heavily on quality assurance checks self-reported by the contractor. Except for accreditation surveys done every three years there are no independent quality assurance checks conducted by the Department or other independent agency.

The department agrees with this finding and further agrees with the Auditor's recommendation that entities external to the contractor should augment this system by conducting quality assurance reviews. As noted above, we have begun planning with Commissioner Jarris of the Health Department to provide staff resources to conduct such audits on the medical, mental health and substance abuse services of the Department of Corrections. This will provide an independent system for oversight, audit and verification.

C.3. DOC eliminated all four positions in its quality assurance division by June 30, 2002.

The department agrees with this finding. As noted by the Auditor, "Due to budget pressures and a desire to reduce central office administrative overhead…" the QA positions have disappeared. This administrative decision reflected budget realities and pressures at the time. The transfer of quality assurance duties to the contractors was the outcome of this decision. Again, as noted above, the department intends to establish in the Department of Health the capacity to provide quality assurance oversight for the mental health as well as medical and substance abuse treatment systems of the Vermont Department of Corrections.

Auditor's Recommendations for Finding C.

The department agrees with the recommendation and, as noted above, is already taking steps to implement an independent and on-going quality assurance process in the Department of Health.

Summary Comments

The Auditor of Accounts' report details three broad areas of concern and makes many points with which the department agrees. The Auditor's recommendations are all accepted by the department and will be implemented.

Any correctional mental health system entails competing priorities, pressures, and a variety of mandates. The unyielding growth in Vermont's combined jail/prison system has created a set of conditions which change rapidly and require responsive, flexible service systems. The delivery of services to inmates, especially during times of great transition, requires flexibility and responsive management. The benefits of attentive administrative oversight, regular auditing of contract deliverables and quality indicators and detailed accounting must be incorporated such that a flexible, responsive and nimble system is able to provide high quality, professional services. It is the intent of the department to use the findings and recommendations of the Auditor's Report to help achieve that system of mental health services for Vermont's inmate population, conditional only upon the availability of resources.

Sincerely,

Steven M. Gold
Commissioner

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